

Anderson Lumber Company and its insurance carrier, American Manufacturers Mutual Insurance (referred to jointly as "Anderson" hereafter) ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge George's award of benefits to G. C. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Ms. C. seeks workers' compensation benefits for low back injuries suffered when she stepped off a ladder while working for Anderson on March 7, 1998. Judge George held an evidentiary hearing on Ms. C.'s claim on January 8, 2004, and then referred the medical aspects of the claim to an impartial panel of medical experts. The panel submitted its report on November 19, 2004. On April 29, 2005, Judge George issued his decision accepting the panel's opinion that Ms. Cooley's injuries resulted from her work accident. On that basis, Judge George concluded Ms. C. was entitled to workers' compensation benefits.

In asking the Appeals Board to review Judge George's decision, Anderson contends Ms. C. is not entitled to benefits because her work at Anderson is not the "legal cause" of her injuries.

DISCUSSION

In *Allen v. Industrial Commission*, 729 P.2d 15 (Utah 1986), the Utah Supreme Court held that an injured worker must establish that his or her work accident is both the "legal cause" and the "medical cause" of the injuries for which workers' compensation benefits are sought. In this case, the only issue is whether Ms. C. has met the requirement of legal causation. Because Judge George did not address the issue in his decision, the Appeals Board addresses it now.

In *Price River Coal Co. v. Industrial Commission*, 731 P.2d 1079, 1082 (Utah 1986), the Utah Supreme Court described the test for legal causation as follows:

Under Allen, a usual or ordinary exertion, so long as it is an activity connected with the employee's duties, will suffice to show legal cause. However, if the claimant suffers from a pre-existing condition, then he or she must show that the employment activity involved some unusual or extraordinary exertion over and above the "usual wear and tear and exertions of nonemployment life." (Citations omitted.)

However, not every pre-existing condition will trigger application of the more stringent test for legal causation. As the Utah Court of Appeals stated in *Nyrehn v. Industrial Commission*, 800 P. 2d 330, 334 (Utah App. 1990):

[The Commission] may not simply presume that the finding of a preexisting condition warrants application of the Allen test. An employer must prove medically that the claimant “suffers from a preexisting condition which **contributes** to the injury.” (Citations omitted; emphasis added.)

While it appears that Ms. C. had back pain prior to her work accident at Anderson, the preponderance of evidence does not establish any preexisting condition that **contributed** to the injury for which she now seeks workers’ compensation benefits. The Appeals Board notes Dr. Chung’s opinion that a preexisting condition did contribute to Ms. C.’s work injury. However, other medical experts reach a different conclusion. In particular, the impartial and fully informed medical panel concluded that all of Ms. C.’s impairment was due to her work accident and that the medical care she received prior to the work accident was due to an unrelated problem--the strain of using her arms at shoulder level as she worked as a beautician. On balance, the Appeals Board is persuaded that Ms. C. did not suffer from a pre-existing condition that contributed to her work-related injury.

In summary, because Anderson failed to prove that Ms. C. suffered from a contributory preexisting condition, she is only required to show a usual or ordinary work-related exertion in order to satisfy the requirement of legal causation. Ms. C.’s use of the ladder at work on March 7, 1998, is sufficient for that purpose.

ORDER

The Appeals Board affirms Judge George’s order and denies Anderson’s motion for review. It is so ordered.

Dated this 9th day of February, 2006.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch